

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Nora K. Mullen,	:	
	:	
Plaintiff	:	Civil Action 2:11-cv-01159
	:	
v.	:	
	:	
John S. Compton, Esq. &	:	Magistrate Judge Abel
Lois Compton,	:	
	:	
Defendants	:	

ORDER

This matter is before the Court on plaintiff's April 3, 2013 motion for reconsideration of the Court's January 30, 2013 Order denying plaintiff's motion for summary judgment as to liability (doc. 23). As a preliminary matter, the Court notes that plaintiff's motion was filed on the eve of trial and more than a month after the decision was issued. The Federal Rules of Civil Procedure do not provide for a motion to reconsider, and one should not be filed unless the judge clearly made an erroneous assertion of fact or law. Judgment calls are not a proper subject of a motion to reconsider.

Turning to the merits, plaintiff states that "the opinion appears to have held for Compton's affirmative defense under Section 1692k(c), without speaking to all three elements there, lack of intention, 'bona fide error,' and 'maintenance of procedures reasonably adapted to avoid any such error.'" Here, the Court did not find that

Compton met his burden of proof of each of the elements of an affirmative defense. Indeed, Compton did not move summary judgment on the issue of the affirmative defense. Consequently, I had no occasion to consider whether the uncontroverted evidence supports his affirmative defenses. Even if Compton had moved for summary judgment, “[t]he fact that one party fails to satisfy that burden on his or its own Rule 56 motion does not automatically indicate that the opposing party or parties has satisfied the burden and should be granted summary judgment on the other motion.” *Durthaler v. Accounts Receivable Management, Inc.*, 854 2d 485, 488 (S.D. Ohio 2012). Here, plaintiff failed to demonstrate that on the uncontroverted facts she is entitled to judgment as a matter of law. I concluded that there was a question of material fact as to whether defendants threatened legal action that they did not intend to take and another dispute regarding whether they intended to and did misrepresent the amount of the debt.

s/Mark R. Abel
United States Magistrate Judge